

[[END CONFIDENTIAL]]

80. Below, CenturyLink provides two detailed descriptions of its frustrated attempts to lodge and process billing disputes with Verizon. A full description of each of CenturyLink's claims and its efforts to obtain refunds for Verizon's overcharges is set forth in the Declaration of Tiffany Brown, attached as Tab C.

**a. First Claim Submission (December 2013 to February 2014**  
**[[BEGIN CONFIDENTIAL]] [REDACTED]**  
**[REDACTED] [[END CONFIDENTIAL]] and Parties' Course of**  
**Conduct Before CenturyLink Filed Its Informal Complaint**

**a. First Claim Submission (December 2013 to February 2014**  
**[[BEGIN CONFIDENTIAL]] [REDACTED]**  
**[REDACTED] [[END CONFIDENTIAL]] and Parties' Course of**  
**Conduct Before CenturyLink Filed Its Informal Complaint**

81. **[[BEGIN CONFIDENTIAL]]**

<sup>111</sup> Brown Decl. ¶ 34.

112 *Id.*

113 *Id.*

114 *Id.*

<sup>115</sup> Brown Decl. ¶ 35.

[illegible]

<sup>117</sup> Ex. 3, 2009 Service Agreement, Ex B. § 7(e)(ii); Ex. 5, 2014 Service Agreement, Ex. B. § 8(c).

119 *Id.*

[illegible]

126 *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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<sup>127</sup> Brown Decl. ¶ 50.

<sup>128</sup> Brown Decl. ¶ 50.

<sup>129</sup> Brown Decl. ¶ 51.

<sup>130</sup> Brown Decl. ¶ 50.

<sup>131</sup> *Id.*

<sup>132</sup> Brown Decl. ¶ 50.

88.

[[END

**CONFIDENTIAL]]** Notably, it was not until receipt of the Informal Complaint that Verizon apparently investigated CenturyLink’s longstanding dispute claims in a meaningful way, at which point Verizon indeed confirmed it had overcharged CenturyLink in at least some respects.<sup>136</sup>

<sup>133</sup> Brown Decl. ¶ 101; see Ex. 40.22, Dispute Notice Letter from Patrick Welch (CenturyLink) to Verizon, *Re: Dispute Notice and Request for Informal Dispute Resolution*, dated Mar. 21, 2016.

<sup>134</sup> Brown Decl. ¶ 50.

<sup>135</sup> Brown Decl. ¶ 101; *see* Ex. 40.23, Response to Dispute Notice Letter from David Szol (Verizon) to Patrick Welch (CenturyLink), dated May 31, 2016.

<sup>136</sup> Verizon Response to Informal Complaint, at 13.

**b. Claim Submission for Credits Due for Services from June 2015 to August 2015 (2014 Service Agreement PY2Q2)**

**[[BEGIN CONFIDENTIAL]]**

<sup>137</sup> Brown Decl. ¶ 85.

138 *Id.*

<sup>139</sup> Brown Decl. ¶ 86.

140 *Id.*

141 *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Brown Decl. ¶ 90.

<sup>145</sup> *Id.*



93.

[[END CONFIDENTIAL]]

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Brown Decl. ¶ 91.

<sup>150</sup> Brown Decl. ¶ 92.

<sup>151</sup> *Id.*



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

CONFIDENTIAL]]

[REDACTED] In Plan Year 3 of the 2014 Service Agreement, Verizon reverted to its strong arm tactics by withholding the entirety of the credits due for the plan year.<sup>158</sup> [[BEGIN

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<sup>155</sup> See Brown Decl. ¶ 91; Ex. 46.04, CLINKFAC0421, Email from Patricia Mason (Verizon) to Anne Grimm (CenturyLink), RE: *Centurylink (Qwest) Custom Solution Monthly Tracking Report with Disputes-PY2Q2*, dated Nov. 19, 2015.

<sup>156</sup> Ex. 46.04, CLINKFAC0421, Email from Patricia Mason (Verizon) to Anne Grimm (CenturyLink), RE: *Centurylink (Qwest) Custom Solution Monthly Tracking Report with Disputes-PY2Q2*, dated Nov. 19, 2015

<sup>157</sup> *Id.*

<sup>158</sup> [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END  
CONFIDENTIAL]] Declaration of Tiffany Brown, at ¶¶ 102-122.

CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>159</sup> Brown Decl. ¶ 121.

<sup>160</sup> *Id.*

<sup>161</sup> Brown Decl. ¶ 105, 111, 116.

<sup>162</sup> Brown Decl. ¶ 102-122. *See* 2014 Service Agreement, Ex. B, § 6. The tariffs exclude disputed amounts from Qualifying MRCs.

[REDACTED]

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

CONFIDENTIAL]]

## II. DISCUSSION

100. Section 203 of the Act requires all carriers to file with the Commission a schedule of their charges, and the classifications, practices and regulations affecting such charges.<sup>165</sup> Under Section 203(c), a carrier can charge only the rates listed in that tariff, no more

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<sup>163</sup> Ex. 52.12, Email from Anne Grimm (CenturyLink) to Bradley Rhotenberry (Verizon), [E] Verizon CSP PY3 Credits, dated Jan. 23, 2018.

<sup>164</sup> See *supra* note 4.

<sup>165</sup> 47 U.S.C. § 203; *Richman Bros. Records, Inc. v. U.S. Sprint Commc'ns Co.*, 953 F.2d 1431, 1435 (3d Cir. 1991).

and no less.<sup>166</sup> Section 201(b) of the Act prohibits common carriers of interstate and foreign telecommunications carriers from engaging in unjust and unreasonable practices.<sup>167</sup>

101. Verizon's billing errors and related practices to impede or resist the dispute process constitute unjust, and unreasonable practices in violation of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** the tariffs, and the Act. Specifically, Verizon's practices violated **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** tariffs, resulting in overcharges to CenturyLink in the following ways:

- overcounting equivalents for DS3 CLF units;
- including units without Qualifying USOCs in the quarterly credit calculation;
- double-counting meet-point circuits;
- misdesignating DS3 CLF units;
- misdesignating DS0 circuits as DS1 units; and
- failing to optimize circuit routing.

102. Furthermore, Verizon's incomplete credit calculation data, broken dispute submission process, and strong-arm dispute resolution practices prevented CenturyLink from disputing Verizon's billing errors and from obtaining the credits that it was rightfully owed. In this regard, Verizon's conduct also constitutes unjust and unreasonable practices. **[[BEGIN CONFIDENTIAL]]** [REDACTED]

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<sup>166</sup> 47 U.S.C. § 203(c)(1); *Qwest Corp. v. AT&T Corp.*, 371 F. Supp. 2d 1250, 1250-51 (D. Colo. 2005).

<sup>167</sup> 47 U.S.C. § 201(b).

██████████ [[END CONFIDENTIAL]] CenturyLink in an attempt to coerce CenturyLink to concur with Verizon's erroneous billing calculations. Under Section 203(c) and the filed rate doctrine, Verizon is required to charge CenturyLink rates consistent with the contract tariffs, and CenturyLink could not waive its right to receive the tariff credits.<sup>168</sup>

**A. Verizon Violated the Contract Tariffs and Overcharged CenturyLink**

103. As further discussed in the accompanying Legal Analysis, once its tariffs are filed with the Commission, Verizon is prohibited from receiving different or greater compensation than the compensation specified in the tariff, and from employing any practices affecting those charges except as specified in the schedule.<sup>169</sup> In other words, the parties are bound to the "substantive basis and terms of the actual sums to be charged and collected under the tariffs."<sup>170</sup>

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<sup>168</sup> See *In re AT&T Services Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, 2597 (2015) ("[T]he doctrines of waiver, estoppel, laches, and ratification do not preclude AT&T from challenging . . . rates, terms and practices under Sections 208 and 415 of the Act."); *Int'l Telecommc'ns Exch. Corp. v. MCI Telecommc'ns Corp.*, 892 F. Supp. 1520, 1540-41 (N.D. Ga. 1995) (filed tariff doctrine precludes affirmative defenses available to defendant in standard contract dispute).

<sup>169</sup> 47 U.S.C. § 203(c). This provision is modeled after similar provisions in the Interstate Commerce Act, and shares its goal of preventing unreasonable and discriminatory charges. *American Tel. and Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222 (1998) ("[T]he century-old 'filed rate doctrine' associated with the ICA tariff provisions applies to the Communications Act as well.").

<sup>170</sup> Known as the filed-rate or filed-tariff doctrine, the doctrine that ensures that the lawfully filed tariff controls with respect to the rate charged. See *Qwest Corp. v. AT&T Corp.*, 371 F. Supp. 2d at 1251. This includes contract tariffs. See, e.g., *Verizon Virginia LLC v. XO Commc'ns LLC*, 144 F. Supp. 3d 850, 857 (E.D. Va. 2015) ("Because the act of filing and agency approval trigger the filed rate doctrine, and because 'contract tariffs' are filed, they must be subjected to the same restraints on interpretation and relief applicable to standard tariffs."); see also *MCI Telecommc'ns Corp. v. AT&T Co.*, 512 U.S. 218, 230 (1994) (explaining that overcharges are defined by reference to the filed rate, and the Act "allow[s] customers and competitors to challenge rates as unreasonable or as discriminatory").

As filed rate doctrine cases have long made clear, the failure to remit credits due after a common carrier has charged the “full commercial” tariff rate constitutes an overcharge.<sup>171</sup>

104. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[[END CONFIDENTIAL]]

105. As noted above, Verizon violated Section 203(c) by committing numerous billing errors, and as a result, failing to provide CenturyLink with the tariffed rate.

**B. Verizon’s Billing and Credit Practices Are Unjust and Unreasonable**

106. Under Section 201(b) of the Act, carriers’ practices must be “just and reasonable.”<sup>172</sup> Practices found to be unjust and unreasonable include violations of the Act, FCC regulations or guidance, or violations of general standards of transparency and fairness in billing practices.<sup>173</sup>

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<sup>171</sup> See Legal Analysis in Support of Formal Complaint, Argument § I(A); see also *Nat’l Carloading Corp. v. United States*, 221 F.2d 81, 83-84 (D.C. Cir. 1955) (acknowledging that the failure to apply credits to the standard rate constituted an overcharge); *Union Pac. R.R. Co., Inc. v. United States*, 524 F.2d 1343, 1359 (Ct. Cl. 1975) (same).

<sup>172</sup> 47 U.S.C. § 201(b).

<sup>173</sup> See Legal Analysis in Support of Formal Complaint, Argument § II; see also *In re Preferred Long Distance, Inc.*, 30 FCC Rcd. 13711, 13715 (2015) (“Section 201(b) prohibits carriers from engaging in unjust or unreasonable practices, whether pursuant to regulations or case-by-case adjudication.”); *In re Matter of Advantage Telecomms. Corp.*, 28 FCC Rcd. 6843, 6847 (2013) (Commission has found that the inclusion of unauthorized charges and fees on bills is an “unjust and unreasonable” practice under Section 201(b).); *In re Petition for Declaratory Ruling on Issues Contained in Count I of White v. GTE*, 16 FCC Rcd. 11558, 11562-63 (2001) (“Section 201 ... prohibit[s] deceptive practices that constitute unjust or unreasonable practices. If a carrier employs unreasonable practices, the carrier may be found to be in violation of Section 201(b) ... even if the rates and rate structures themselves are not unreasonable.”).



107. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END

CONFIDENTIAL]] Verizon engaged in unjust and unreasonable practices. CenturyLink raised its disputes within a reasonable time and supported them with extensive detail, including details about the same circuits counted in error quarter after quarter over the course of years. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]]

1. Verizon's Failure to Abide by the Terms of the [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] Dispute Resolution Provisions Was an Unjust and Unreasonable Practice. [[END CONFIDENTIAL]]

a. Verizon Unreasonably Failed to Consider CenturyLink's Overcharge Disputes Even Though They Were Brought Within a Reasonable Time [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] Tariffs.

108. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]] In effect, Verizon prevented CenturyLink from receiving the correct tariffed rate.<sup>174</sup>

<sup>174</sup> See Legal Analysis in Support of Formal Complaint, Argument § II(B).

**[[BEGIN CONFIDENTIAL]]**

**[[END CONFIDENTIAL]]** That very same section,

however, expressly contemplates resolution of **[[BEGIN CONFIDENTIAL]]**

<sup>175</sup> See, e.g., Ex. 14, Verizon FCC Tariff 1, Section 21, Option 57(H)(5)(c), (f), (g) (“To the extent that the customer has any disputes, the customer must submit such disputes to the Telephone Company no later than the thirtieth (30th) calendar day following the end of each Quarter.... Any amounts or Qualifying Services that are included in calculation of the Billing Credits will not be subject to any claims or disputes by the customer at any time in the future.... If the Telephone Company bills amounts after the determination of the Billing Credits that would have otherwise been included in the determination of the Billing Credits, there in no event will be any adjustment to the Billing Credits.... The Billing Credits as determined by the Telephone Company are not subject to dispute.”).

<sup>176</sup> Ex. 3, 2009 Service Agreement Section 7(e)(v) (emphasis added); *see also* Ex. 14, Verizon Tariff No. 1 Section 21, Option 57(H)(5)(e).

<sup>177</sup> Ex. 5, 2014 Service Agreement, Ex. B § 8(f).

<sup>178</sup> Ex. 5, 2014 Service Agreement, Ex. B § 8(g).

<sup>182</sup> See 2009 Service Agreement, Ex. B, Attachment 1; 2014 Service Agreement, Ex. B, Attachment 1; Ex. 14, Verizon FCC Tariff No. 1 § 21, Option 57(H); Ex. 15, Verizon FCC Tariff No. 11 § 32, Option 55(H); Ex. 16, Verizon FCC Tariff No. 14 § 21, Option 29(H); Ex. 17, Verizon FCC Tariff No. 1 § 21, Option 65(G); Ex. 18, Verizon FCC Tariff No. 11 § 32, Option 65(G); Ex. 19, Verizon FCC Tariff No. 14 § 21, Option 34(G).

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

113. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>183</sup> Ex. 2, Attachment 11, Section 15 (emphasis added), *see also* Ex. 4, Attachment 13, Section 9.4.

<sup>184</sup> *See* Brown Decl. ¶¶ 35, 40, 42-43, 46-47, 58-59, 64-65, 69-70, 74-75, 79-80, 85-86, 94, 98, 103, 109, 114, 119 (documenting emails from Verizon containing the quarterly credit reports).

<sup>185</sup> *See, e.g.*, Ex. 14, Verizon FCC Tariff No. 1 § 21, Option 57(H)(5)(b), (e); Tab B, § II.

b. **Even If Verizon's Interpretation of the [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] Was Reasonable, Verizon Failed to Abide by those Same Dispute Resolution Provisions and Cannot Now Rely on Them to CenturyLink's Detriment.**

[illegible]

190 *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END CONFIDENTIAL]]

116. Further, Verizon had knowledge that CenturyLink was disputing Verizon's treatment or inclusion of specific circuits, but still failed to remedy this for subsequent periods. In many instances, CenturyLink had previously disputed the exact same circuit in the same circumstances.<sup>192</sup> Yet despite those numerous disputes giving clear and repeated notice of the issue, Verizon rejected the same disputes as untimely across multiple quarters, and refused to investigate its ongoing errors and breaches. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>191</sup> *Id.*

<sup>192</sup> See Sections I.C.2-4, *supra*; Legal Analysis in Support of Formal Complaint, Argument § § II(B)(1)(a). See also, e.g., CenturyLink Reply, at 6 (noting that CenturyLink disputed the same circuit miscount example across multiple quarters).

[REDACTED]  
[REDACTED] **[[END CONFIDENTIAL]]** unjust and unreasonable practice, and demonstrates how Verizon's narrow and self-interested reading of a single dispute provision worked to undermine the benefit of the bargain for which CenturyLink had negotiated.

117. It is also evident that Verizon failed to undertake a proper review of CenturyLink's claims, despite receiving notice and proper documentation, until years after CenturyLink first filed its dispute. Verizon acknowledged that when it finally engaged in a substantive review of CenturyLink's claims—apparently for the first time after being served with CenturyLink's Informal Complaint—it discovered multiple errors in its billing.<sup>193</sup> **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** they show that Verizon failed to timely or seriously investigate CenturyLink's claims and thus failed to comply with the relevant dispute resolution requirements in the agreements or its own tariffs.<sup>194</sup>

118. Rather than undertake a good faith contemporaneous review of CenturyLink's disputes and supporting material, which would have identified at least some of CenturyLink's claimed overcharges (as Verizon has acknowledged), Verizon instead either rejected or stonewalled disputes while simultaneously refusing to release undisputed amounts. In total, the practices described above are indisputably unjust and unreasonable.

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<sup>193</sup> Verizon Response to Informal Complaint, at 13.

<sup>194</sup> See, e.g., Brown Decl. ¶¶ 52, 56; Welch Decl. ¶ 18.





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END CONFIDENTIAL]]

121. The practical consequence of these Verizon-imposed limitations was that CenturyLink had no choice but to express “concurrence” with Verizon’s stated credit calculation [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] before CenturyLink could analyze and challenge Verizon’s underlying data calculations for any factual errors.

122. Although CenturyLink expressed “concurrence” with Verizon’s math, it is important to not conflate this concurrence to a threshold numerical calculation [[BEGIN CONFIDENTIAL]] [REDACTED] [REDACTED] [[END CONFIDENTIAL]] with CenturyLink’s agreement to Verizon’s underlying billing practices

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<sup>198</sup> See Brown Decl. ¶ 40.

<sup>199</sup> See Brown Decl. ¶ 59.

<sup>200</sup> See, e.g., Brown Decl. ¶ 84.

<sup>201</sup> See, e.g., Brown Decl. ¶ 89-90.

themselves, [[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED] [[END CONFIDENTIAL]] CenturyLink disputed  
the latter once it became aware of the billing discrepancies.

123. [[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [[END CONFIDENTIAL]]

**2. Verizon's Withholding of Undisputed Credits Is an Unjust and Unreasonable Practice.**

124. CenturyLink's difficulties were exacerbated by the fact that [[BEGIN  
CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]] CenturyLink was forced to express  
"concurrence" with Verizon's calculations in order [[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED] [[END CONFIDENTIAL]]<sup>203</sup>

125. A carrier cannot withhold credits and discounts after a customer has disputed its  
bill.<sup>204</sup> This practice is a violation of Section 201(b).<sup>205</sup> For example, in *NOS Commc'ns, Inc.*,

<sup>202</sup> See *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S.Ct. 604, 615 (2013); *LaMantia v. Voluntary Plan Adm'rs, Inc.*, 401 F.3d 1114, 1119 (9th Cir. 2005).

<sup>203</sup> See Legal Analysis in Support of Formal Complaint, Argument § § II(C).

<sup>204</sup> *In re NOS Commc'ns, Inc.*, 16 FCC Rcd. 8133, 8135 (2001).

<sup>205</sup> *Id.*

the FCC found a carrier's practice of misleading customers and then ignoring or prohibiting billing disputes to be unjust and unreasonable.<sup>206</sup> [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [[END  
CONFIDENTIAL]] Verizon's withholding of the undisputed credits constituted an unjust and unreasonable act in violation of the agreements, the tariffs and Section 201(b).

**3. Failing to Provide a Reasonable Time in which CenturyLink Could Dispute Overcharges Is an Unjust and Unreasonable Practice.**

126. Verizon's billing practices associated with the tariffs are demonstrably unreasonable and in violation of Section 415 of the Act as well as Congressional policy, as further described in the Legal Analysis in Support of Formal Complaint, Argument § II(B)(1)(c). The policy underlying Section 415(c) is particularly important to consider in light of the circumstances here, which involved Verizon rejecting disputes on the grounds that it lacked information that was not available to CenturyLink until the subsequent credits posted, while refusing to substantively investigate clear billing and credit calculation errors when CenturyLink did provide such information. [[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED] [[END CONFIDENTIAL]] CenturyLink sought relief from overcharges within a reasonable period, and well within the time frame in § 415(c). By failing to consider these claims in a timely and substantive way, Verizon's conduct here goes against the essence of § 415(c) and is unjust and unreasonable. Rather than undertake a good

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<sup>206</sup> *Id.*

<sup>207</sup> 2009 Service Agreement, Ex. B § 7(g); 2014 Agreement, Ex. B § 7(d).

**PUBLIC VERSION -- CONFIDENTIAL MATERIAL OMITTED**

faith contemporaneous review of CenturyLink's disputes and supporting material, which would have identified the overcharges Verizon now acknowledges, among others, Verizon instead either rejected or stonewalled disputes while simultaneously refusing to release undisputed amounts. Those practices were and remain unjust and unreasonable.

**COUNT I**

**(Violation of Tariff Rates, Section 203(c), 47 U.S.C. § 203(a) & (c))**

127. CenturyLink incorporates, repeats, and realleges all of the preceding paragraphs stated above, and incorporates them by reference as though fully set forth herein.

128. Section 203(a) of the Act states that "[e]very common carrier . . . shall . . . file with the Commission . . . schedules showing all charges . . . for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established . . . and showing the classifications, practices, and regulations affecting such charges."<sup>208</sup>

129. Section 203(c) provides that "[n]o carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication[s] unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges

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<sup>208</sup> 47 U.S.C. § 203(a).

so specified, or (3) . . . employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.”<sup>209</sup>

130. Verizon has violated its obligation under the Act to charge for service and provide credits in accordance with its tariffs.

131. Specifically, Verizon received greater compensation than allowed under the tariffs and Section 203(c) by erroneously billing for:

- DS3 CLF units in excess of those used under FMS;
- Units without USOCs;
- Double-counted meet-point circuits;
- DS3 CLF units that were misdesignated as DS3 CLS units;
- DS0 that were misdesignated DS1 units; and
- Units for which it had failed to optimize circuit routing prior to the expiration of the FMS.

132. Verizon further failed to remit credits in amounts compensating CenturyLink for the erroneously billed units.

133. Verizon has also employed unjust and unreasonable practices that affected the proper charges under the tariff in violation of Section 203(c), including by withholding undisputed amounts until CenturyLink was compelled to “concur” in erroneous credit amounts, and by failing to provide complete and timely credit calculation information necessary for the disputes.

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<sup>209</sup> 47 U.S.C. § 203(c) (emphasis added).

**PUBLIC VERSION -- CONFIDENTIAL MATERIAL OMITTED**

134. For the foregoing reasons, Verizon has (1) received compensation for tariffed services greater than the charges specified in the tariffs; (2) remitted only a portion of these charges in violation of the tariffs; (3) employed practices affecting such charges in ways not specified in these tariffs; and (4) billed charges and failed to credit amounts pursuant to its tariffs in violation of Section 203(c).

135. As a direct and proximate result of Verizon's violations of the Act, CenturyLink has been improperly overcharged, and has failed to receive credits due, and is thus entitled to compensation for all amounts for which it failed to receive proper credits, plus interest.

**COUNT II**

**(Unjust and Unreasonable Practices, Section 201, 47 U.S.C. § 201(b))**

136. CenturyLink incorporates, repeats, and realleges all of the preceding paragraphs stated above, and incorporates them by reference as though fully set forth herein.

137. Under Section 201(b) of the Act, "[a]ll charges, practices, classifications, and regulations for and in connection with [an interstate or foreign] communication service, shall be just and reasonable ...[.]"<sup>210</sup>

138. Verizon's failure to issue credits due to CenturyLink for the use of the special access services violates the contract tariffs, and is unjust and unreasonable in the following ways.

139. *First*, Verizon unjustly and unreasonably received compensation greater than that allowed under the tariffs—a violation Section 203(c) as noted above, and consequently, a violation of Section 201(b) of the Act. Specifically, Verizon failed to charge the tariff rates and failed to optimize its circuits under the FMS.

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<sup>210</sup> 47 U.S.C. § 201(b).

**PUBLIC VERSION -- CONFIDENTIAL MATERIAL OMITTED**

140. *Second*, Verizon's erroneous billing and credit practices are unjust and unreasonable practices in violation of Section 201(b) irrespective of if they also violate Section 203(c)—Verizon is obligated to correctly bill for services provided and is obligated to give credits as indicated under the tariffs, neither of which it did.

141. *Third*, Verizon's failure to optimize circuits, as it was obligated to do, prior to CenturyLink transitioning off of FMS, constitutes an unjust and unreasonable practice.

142. *Fourth*, Verizon unjustly and unreasonably prevented CenturyLink from disputing overcharges by:

- Failing to provide sufficient information within a reasonable time about its services, billing, and credits from which CenturyLink could discern discrepancies.

[[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED]  
[REDACTED]  
• [REDACTED]  
[REDACTED] [[END  
CONFIDENTIAL]]

143. *Fifth*, Verizon unjustly and unreasonably failed to consider CenturyLink's claims and failed to correct known errors, [[BEGIN CONFIDENTIAL]] [REDACTED]  
[REDACTED] [[END  
CONFIDENTIAL]] even though Verizon received notice of such disputes within the two-year limitations period in Section 415 of the Act.

144. *Sixth*, Verizon unjustly and unreasonably withheld undisputed credits owed to CenturyLink.

145. For the foregoing reasons, Verizon's practices and charges are unjust and unreasonable in violation of Section 201(b) of the Act.

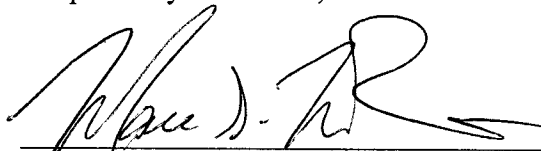
146. As a direct and proximate result of Verizon's violations of the Act, CenturyLink has been unjustly and unreasonably denied credits due, and is thus entitled to complementation for all amounts for which it failed to receive proper credits, plus interest.

### III. PRAYER FOR RELIEF

147. Accordingly, CenturyLink requests the Commission to (1) find that Verizon has violated its filed tariffs and contract tariffs as well as Sections 201(b) and 203(c) of the Act; (2) find that Verizon is obligated to refund to CenturyLink the overcharged amount, **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** as set forth above (plus interest and attorney's fees) pursuant to the tariffs and the filed tariff doctrine; and (3) direct Verizon to pay those amounts.

Dated: February 26, 2018

Respectfully submitted,



Marc S. Martin  
Brendon P. Fowler  
Michael A. Sherling  
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<sup>211</sup> See 47 C.F.R. § 1.722(a), (b), (h). For a computation of damages, see ¶¶ 36, 40-69, *supra*. As discussed in Footnote 4, *supra*, Verizon has indicated that it will pay CenturyLink the undisputed amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** by the end of February 2018. If this amount is not paid by Verizon, then CenturyLink's request in this paragraph 147 would be inclusive of both the overcharged amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** and the undisputed amount of **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**



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**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2018 pursuant to the Protective Order and the February 9, 2018 Letter Ruling, I caused a copy of the foregoing Formal Complaint, as well as all accompanying materials, to be served as indicated below to the following:

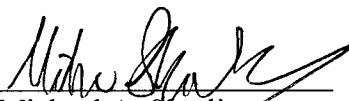
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Respectfully submitted,

  
Michael A. Sherling

Tab A

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
CenturyLink Communications, LLC f/k/a Qwest	)	
Communications Company, LLC,	)	
	)	
Complainant,	)	Docket No. 10-33
v.	)	File No. EB-16-MDIC-0015
	)	
Verizon Services Corp.; Verizon Virginia LLC;	)	
Verizon Washington, D.C., Inc.; Verizon Maryland	)	
LLC; Verizon Delaware LLC; Verizon Pennsylvania	)	
LLC; Verizon New Jersey Inc.; Verizon New York	)	
Inc.; Verizon New England Inc.; Verizon North LLC;	)	
Verizon South Inc.,	)	
	)	
Defendants.	)	

LEGAL ANALYSIS IN SUPPORT OF CENTURYLINK COMMUNICATIONS, LLC'S  
FORMAL COMPLAINT

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## INTRODUCTION

Pursuant to Section 208 of the Communications Act (“Act”), 47 U.S.C. § 208, and Section 1.721(a)(6) of the Federal Communications Commission’s (“Commission” or “FCC”) rules, 47 C.F.R. § 1.721(a)(6), Complainant CenturyLink Communications, LLC (“CenturyLink”) hereby submits this Legal Analysis in support of its Formal Complaint filed against the above-captioned Verizon entities (individually and collectively, “Verizon.”). As set forth in more detail in CenturyLink’s Formal Complaint, CenturyLink brings this proceeding to recover overcharges by Verizon for tariffed special access services. This brief contains CenturyLink’s legal analysis of the issues in the Formal Complaint, and supplements the analysis set forth in the Formal Complaint and other materials submitted herewith.

## BACKGROUND

### I. THE COMMISSION’S REGULATION OF SPECIAL ACCESS SERVICES.

#### A. Special Access Services.

Special access services refer to “dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections,” including DS1 and DS3 interoffice facilities and channel terminations between an incumbent local exchange carrier’s (“ILEC”) serving wire center and end user channel terminations.<sup>1</sup> Businesses like CenturyLink use special access services to enable secure and reliable transfer of data, for example, to create private or virtual private networks or resell service to their own customers.

---

<sup>1</sup> *In re Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd. 3459, 3463, ¶ 6 (2017).

The Commission subjects the provision of special access services by ILECs to certain dominant carrier safeguards. Although these safeguards have been relaxed through forbearance,<sup>2</sup> providers of special access services like Verizon are still subject to the requirements of the Act. The providers must charge and receive compensation only at the rates described in their filed tariffs.<sup>3</sup> They also must not engage in unjust or unreasonable practices.<sup>4</sup>

**B. Verizon's Violation of the Tariffs.**

Verizon's improper billing calculation and deployment of circuit units in excess of the applicable rates violated the agreements and Verizon's tariffs, resulting in overcharges to CenturyLink under 47 U.S.C. § 415(g).<sup>5</sup> Specifically, as explained below and in the supporting Declaration of Tiffany Brown, Verizon violated its tariffs and overcharged CenturyLink by miscalculating and double-counting certain DS3 CLF units, including units without a qualifying USOC in the quarterly credit calculations, misdesignating circuits and wrongly charging for partially used DS3 circuits. Verizon also overcharged CenturyLink by failing to optimize CenturyLink-dedicated circuits that Verizon had inefficiently spread across numerous DS3

---

<sup>2</sup> *Id.*, ¶ 8.

<sup>3</sup> 47 U.S.C. § 203(c); see *Tariff Investigation Order and Further Notice of Proposed Rulemaking*, WC Docket No. 16-143, No. 15-247, No. 05-25, RM-10593, FCC 16-54, ¶¶ 25, 440, 515-6 (2016) (noting that Verizon's deemed grant of Title II forbearance excludes TDM special access services). For the time periods at issue in this dispute, Verizon provided special access services to CenturyLink under its tariffs filed with the Commission.

<sup>4</sup> 47 U.S.C. § 201(b).

<sup>5</sup> See, e.g., *Brown v. MCI WorldCom Network Servs., Inc.*, 277 F.3d 1166 (9th Cir. 2002); *AT&T Corp. v. Beehive Tel. Co.*, No. 2:08CV941, 2010 WL 376668 (D. Utah Jun. 26, 2010); *Viking Commc'ns, v. AT&T Corp.*, No. 05-1078(GEB), 2005 WL 2621919 (D.N.J. Oct. 14, 2005).

facilities. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]<sup>6</sup> [[END CONFIDENTIAL]]

CenturyLink repeatedly notified Verizon of the overcharges in writing. However, Verizon responded to CenturyLink's dispute notices either by rejecting them with minimal explanation, or remaining silent.<sup>7</sup> Verizon also did not provide sufficient information for CenturyLink to identify and dispute Verizon's errors within the time periods Verizon asserted should apply, and Verizon refused to release large *undisputed* credit amounts when CenturyLink tried to dispute portions of the credit calculations or circuit counts.<sup>8</sup> These practices unjustly and unreasonably prejudiced CenturyLink's ability to enforce its rights under the tariffs and agreements. Verizon's refusal to release undisputed credit amounts [[BEGIN

CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]] is patently

unreasonable, and contrary to the agreements and related tariffs.<sup>9</sup> Verizon's strong-arm tactics, if not rejected by the Commission, would allow Verizon license to overcharge customers of tariffed services and then coerce them into accepting those overcharges with no recourse. Doing so would destroy any force of effect of the governing tariffs and the intent of the common carrier provisions of the Act.

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<sup>6</sup> See, e.g., Brown Decl. ¶ 29.

<sup>7</sup> CenturyLink's overcharge disputes were also timely presented in writing within the initial two-year period under 47 U.S.C. § 415(c), and thus remain timely following Verizon's subsequent denials or silence. See, e.g., *AT&T Corp. v. Beehive Tel. Co.*, 2010 WL 376668, at \*21; *Viking Commc'ns, Inc.*, 2005 WL 2621919, at \*8.

<sup>8</sup> See, e.g., Brown Decl. ¶¶ 34, 85, 88, 93, 97, 102-118, 121.

<sup>9</sup> See, e.g., *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. C13-4117-DEO, 2014 WL 2866474, at \*25 (N.D. Iowa June 24, 2014) (requirement that party agree to overcharges prior to disputing amounts is unreasonable).

ARGUMENT

**I. VERIZON VIOLATED SECTION 203(C) OF THE ACT BY CHARGING CENTURYLINK GREATER AMOUNTS THAN ALLOWED UNDER THE TARIFFS.**

The Act requires Verizon to file its tariffs with the Commission.<sup>10</sup> Once these tariffs are in effect, Verizon is prohibited from (1) receiving greater compensation for any communication between the points named in any such schedule than the charges specified in the tariff, (2) remitting by any means or device any portion of the charges other than as specified in the tariff, and (3) employing or enforcing any classifications, regulations, or practices affecting the charges except as specified in the tariff.<sup>11</sup> This is known as the filed tariff (or filed rate) doctrine, which ensures that the lawfully filed tariff controls with respect to the rate charged.<sup>12</sup> The filed tariff doctrine likewise applies to filed contract tariffs, and includes not only rates or charges, but other terms and conditions related to the services as well.<sup>13</sup> Verizon has violated the doctrine in multiple ways, resulting in extensive and impermissible overcharges to CenturyLink.

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<sup>10</sup> 47 U.S.C. § 203(a).

<sup>11</sup> 47 U.S.C. § 203(c). Verizon filed the contract tariffs related to the two service agreements on May 15, 2009 (Transmittal No. 1016) and February 12, 2014 (Transmittal No. 1261). Exs. 28, 29.

<sup>12</sup> See *Qwest Corp. v. AT&T Corp.*, 371 F. Supp. 2d 1250, 1251 (D. Colo. 2005) (“Under the interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge, [d]eviation from it is not permitted upon any pretext.... ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.”) (quoting *Louisville & N. R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)).

<sup>13</sup> See, e.g., *Verizon Virginia LLC v. XO Commc’ns, LLC*, 144 F. Supp. 3d 850, 867 (E.D. Va. 2015) (“Because the act of filing and agency approval trigger the filed rate doctrine, and because ‘contract tariffs’ are filed, they must be subjected to the same restraints on interpretation and relief applicable to standard tariffs.”); *Global NAPS, Inc. v. Verizon New England, Inc.*, 327 F.

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**A. Verizon's Refusal to Pay Tariff Credits and Withholding of Undisputed Amounts Constitute Overcharges.**

An "overcharge" is a charge "for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission." 47 U.S.C. § 415(g). The FCC has recognized that a complaint based on "overcharges" necessarily implicates the prohibition against a carrier receiving greater or different compensation than the charges specified in the tariff as set forth in 27 U.S.C. § 203(c).<sup>14</sup> The prohibition on overcharges has been broadly interpreted to encompass any compensation received by a carrier that is different from that allowed under the tariff in question, including all of the terms and conditions contained in the

---

Supp .2d 290, 301 (D. Vt. 2004) (filed rate doctrine also applies to non-price aspects of the services).

<sup>14</sup> See *In re Municipality of Anch.*, 4 FCC Rcd. 2472, 2474 ¶ 16 (1989) (noting that where a LEC "insist[s] on receiving greater compensation for interstate communication" than allowed by its tariff, the aggrieved party has a valid overcharge claim under Section 203); *PAETEC v. MCI Commc'ns Services, Inc.*, 712 F. Supp. 2d 405, 416-418 (E.D. Pa. 2010) (where LEC set composite rate to combined local and tandem switching, it "charged a rate in excess of the maximum rate allowed" for its direct trunking services and thus claims for the excess amount "are, in essence, claims for overcharges."); see also 47 U.S.C. § 203(c) (no carrier shall "charge, demand, collect, or receive a greater or less or different compensation . . . than the charges specified in the schedule then in effect.").

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tariff.<sup>15</sup> In analogous situations, courts have determined that failures to remit credits due upon “full commercial” tariffed charges constitute an overcharge.<sup>16</sup>

That the term “overcharges” encompasses total compensation greater than that contemplated by the tariff is further supported by Section 415’s legislative history, which distinguishes “overcharges” under Section 415(c) from claims for other types of “damages” under Section 415(b). The House Committee on Interstate and Foreign Commerce has clarified that Section 415(c) applies to sums retained by the carrier in excess of the tariffed rates while Section 415(b) applies to “actions for damages not based on overcharges, such as actions claiming tariff charges are unjust, unreasonable, unduly discriminatory, or otherwise contrary to the provisions of the Communications Act.”<sup>17</sup>

The agreements and tariffs at issue in the Formal Complaint make clear that [[BEGIN  
CONFIDENTIAL]] [REDACTED]

<sup>15</sup> See, e.g., *Brown*, 277 F.3d at 1171-72 (claim that customer was billed for extra phone lines constituted a claim to enforce a tariff, i.e., a claim to recover overcharges); *AT&T Corp. v. Beehive Tel. Co.*, 2010 WL 376668, at \*5, \*21 (where tariff permitted only one charge per access minute but carrier impermissibly charged three times, AT&T’s claim was for recovery of “overcharges”); *Viking Commc’ns, Inc. v. AT&T Corp.*, 2005 WL 2621919, at \*1 (allegation that defendant charged “rates that differed from those described in the Agreement” between the parties constituted a claim for recovery of “overcharges”); *In re Mocatta Metals Corp.*, 44 F.C.C.2d 605, 607 (1973) (where customer refused to pay for charges related to an allegedly inoperable communication system, the claim was for recovery of “overcharges”).

<sup>16</sup> *Natl Carloading Corp. v. United States*, 221 F.2d 81, 82-83 (D.C. Cir. 1955) (acknowledging that the failure to apply credits to the standard rate constituted an overcharge); *Union Pac. R.R. Co., Inc. v. United States*, 524 F.2d 1343, 1359 (Ct. Cl. 1975) (same); *American Tel. and Tel. Co. v. Central Office Telephone, Inc.*, 524 U.S. 214, 222 (1998) (“the century-old ‘filed rate doctrine’ associated with the ICA tariff provisions applies to the Communications Act as well.”).

<sup>17</sup> See H.R. Rep. 93-1421 (1974), reprinted in 1974 U.S.C.C.A.N. 6310, 6311.

[[END CONFIDENTIAL]] tariffed rate.<sup>18</sup> [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

CONFIDENTIAL]]<sup>19</sup> Verizon's tariff transmittals likewise explained that the purpose of the tariff option was so that "the customer can receive billing credits on certain access services when the customer satisfies certain eligibility requirements and other conditions as further described in the attached tariff pages."<sup>20</sup>

Verizon's failure to provide the correct credits under the contract tariffs is a deviation from the tariffed rate in violation of Section 203(c).<sup>21</sup> By not providing those credits, Verizon charged more than what was provided for in the contract tariffs. CenturyLink seeks to enforce

[[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]] which incorporate by reference Verizon's Tariff No. 1

<sup>18</sup> See Ex. 14, Verizon FCC Tariff No. 1 § 21, Option 57(H); Ex. 15, Verizon FCC Tariff No. 11 § 32, Option 55(H); Ex. 16, Verizon FCC Tariff No. 14 § 21, Option 29(H); Ex. 17, Verizon FCC Tariff No. 1 § 21, Option 65(G); Ex. 18, Verizon FCC Tariff No. 11 § 32, Option 65(G); Ex. 19, Verizon FCC Tariff No. 14 § 21, Option 34(G).

<sup>19</sup> Ex. 5, 2014 Service Agreement, Ex. B, Section 1 (emphasis added); see also Ex. 3, 2009 Service Agreement, Exhibit B, Section 1 (same).

<sup>20</sup> Ex. 29, Verizon Telephone Companies, Transmittal No. 1261 (February 12, 2014), at 2; see also Ex. 28, Transmittal No. 1016 (May 15, 2009) ("With this Option, the customer can receive Quarterly Billing Credits and other benefits when the customer maintains certain billed volumes of Special Access Qualifying Services that are included in this new Option, and meets other criteria as specified in the attached tariff pages.").

<sup>21</sup> See, e.g., *Qwest Corp. v. Public Serv. Comm'n of Utah*, No. 2:05CV00104PGC, 2006 WL 842891, \*3-4 (D. Utah Mar. 28, 2006) (deviation from the tariffed rates is not permitted under any pretext).



(among other tariffs).<sup>22</sup> Because this dispute seeks to enforce Verizon's Tariff No. 1 and the contract tariffs as well as recover compensation that Verizon has retained in excess of its tariffs, CenturyLink's claim is a claim for "overcharges" under Sections 415(c) and (g).

**B. CenturyLink's Notice to Verizon of These Overcharges Serves to Toll the Limitations Period Under Section 415(c).**

Under 47 U.S.C. § 415(c), the statute of limitations for a complaint based on an overcharge is two years from the date of the overcharge, unless the complaining party submits a written claim to the carrier within two years, in which case the statute of limitations does not run until two years after the claim is denied in writing by the carrier. To trigger this two-year extension of the limitations period under Section 415(c), claims for overcharges must be presented "in writing" to the carrier within two years of the time a cause of action accrues, that is, two years from the date the wronged party had notice of the overcharges.<sup>23</sup> The writing must give sufficient notice of the claim to the carrier.<sup>24</sup> Here, CenturyLink's timely submissions to Verizon describing the disputes **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** suffice as a "writing," sufficient to give Verizon notice of CenturyLink's claims. Each submitted claim was substantive and provided extensive detail regarding the nature and facts of CenturyLink's disputes. As set forth in the table below,

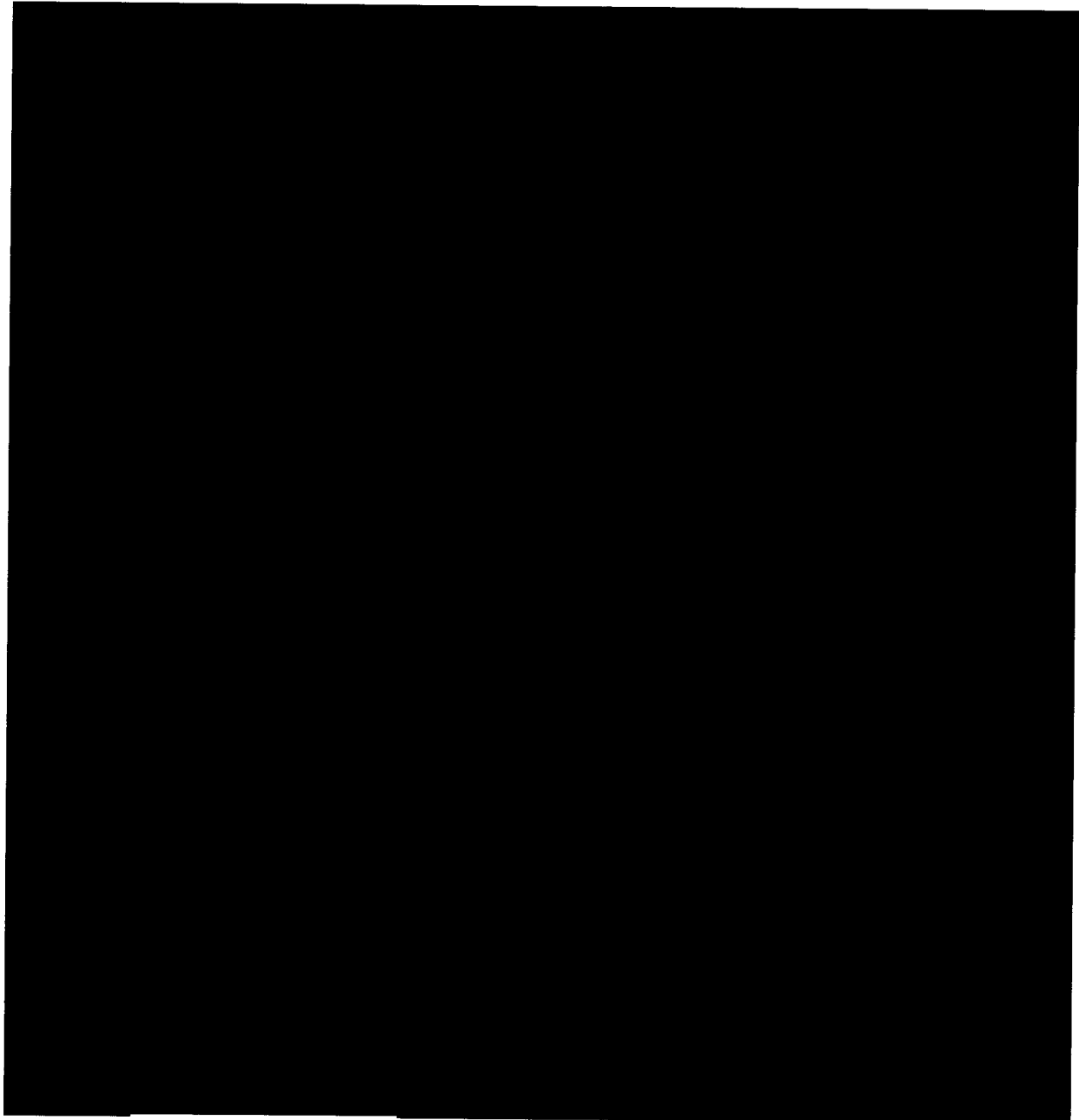
<sup>22</sup> Ex.1, MSA; Ex. 2, Attachment 11; Ex. 3, 2009 Service Agreement; Ex. 4, Attachment 13; Ex. 5, 2014 Service Agreement; *see* Ex. 14, Verizon FCC Tariff No. 1 § 21, Option 57; Ex. 15, Verizon FCC Tariff No. 11 § 32, Option 55; Ex. 16, Verizon FCC Tariff No. 14 § 21, Option 29; Ex. 17, Verizon FCC Tariff No. 1 § 21, Option 65; Ex. 18, Verizon FCC Tariff No. 11 § 32, Option 65; Ex. 19, Verizon FCC Tariff No. 14 § 21, Option 34.

<sup>23</sup> 47 U.S.C. § 415(C).

<sup>24</sup> *See AT&T Corp. v. Beehive Tel. Co.*, 2010 WL 376668, at \*\*21-22 (email correspondence describing billing dispute sufficient to give notice of claim).

CenturyLink's claims and the filing of its Informal Complaint were timely under Section 415(c) based on Verizon's denials.

Table of CenturyLink-Verizon Claims<sup>25</sup> [[BEGIN CONFIDENTIAL]]



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<sup>25</sup> See Brown Decl. ¶¶ 33-129.